

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**A. KOSTYUK AND
N. KOSTYUK**

) OTA Case No. 21057891
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OPINION

Representing the Parties:

For Appellants: A. Kostyuk and N. Kostyuk

For Respondent: Joel M. Smith, Tax Counsel III

For Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Kostyuk and N. Kostyuk (appellants)¹ appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund for the 2015 tax year.

Appellants waived their right to an oral hearing. Therefore, we decide this appeal based on the written record.

ISSUE

Whether the statute of limitations bars appellants’ claim for refund for the 2015 tax year.

FACTUAL FINDINGS

1. Appellants are California residents who earned sufficient income to prompt a filing requirement. Appellants’ 2015 California tax return was due on April 15, 2016. Appellants failed to timely file their 2015 California tax return.
2. On October 10, 2017, FTB issued appellants a Request for Tax Return for the 2015 tax year asking that they file or provide evidence that they already filed their 2015 California

¹ Because it does not impact our conclusion, throughout this Opinion, we refer only to appellants, though FTB sent filing enforcement and collection notices, such as a Request for Tax Return, to appellant A. Kostyuk (and not appellant N. Kostyuk).

- tax return, or explain why they had no filing requirement for the 2015 tax year.
3. When appellants did not respond, FTB issued a Notice of Proposed Assessment (NPA) for the 2015 tax year. Appellants did not timely protest the NPA, and it became final.
 4. FTB initiated collection action. Between May 11, 2018, and April 15, 2019, FTB received all payments due from appellants for the 2015 tax year. The last payment was received on April 15, 2019.
 5. On August 4, 2020, appellants filed their joint 2015 California tax return (Form 540) and claimed an overpayment of tax. FTB accepted the return as filed, which it treated as a claim for refund for the 2015 tax year.
 6. On February 25, 2021, FTB denied appellants' claim for refund because appellants failed to file their return claiming the refund before the statute of limitations expired.
 7. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) On March 30, 2020, FTB published guidance postponing the deadline for filing a timely claim for refund to July 15, 2020, when the deadline would otherwise have expired between March 12, 2020, through July 15, 2020 (Postponement Period).²

On August 4, 2020, appellants untimely filed their return for the 2015 tax year.³ R&TC section 19306(a)'s second four-year statute of limitations beginning on the original return due date, and the provision's one-year statute of limitations to file a timely claim for refund would have expired during the Postponement Period. Appellants' 2015 California tax return was due on April 15, 2016, and the four-year statute of limitations expired on April 15, 2020, during the

² See FTB Notice 2020-02 (March 30, 2020), available at: <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.

³ Appellants do not dispute that the claim was untimely filed; as such, R&TC section 19306(a)'s first four-year statute of limitations is inapplicable.

Postponement Period. Appellants' last payment for the 2015 tax year was on April 15, 2019, and one year from that date (i.e., April 15, 2020) expired during the Postponement Period. FTB Notice 2020-02 considers as timely a claim for refund that would have expired within the Postponement Period if filed on or before July 15, 2020. However, as mentioned above, on August 4, 2020, appellants filed their claim for refund, after the July 15, 2020 due date.

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602 (*Dalm*).) Such fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.)

Appellants assert that FTB took money that did not belong to it, and that the amount taken was unreasonably high. However, a taxpayer's untimely filing of a claim for any reason bars a refund, even where the tax is erroneously, illegally, or wrongfully collected, or was not owed in the first place. (*Appeal of Benemi Partners, L.P.*, *supra*; *Dalm*, *supra*.) We have no authority to grant relief except where the law specifically allows. (*Appeal of Estate of Gillespie*, *supra*; *Appeal of Benemi Partners, L.P.*, *supra*.)

HOLDING

The statute of limitations bars appellants' claim for refund for the 2015 tax year.

DISPOSITION

FTB's action in denying appellants' claim for refund is sustained.

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Asaf Kletter

Administrative Law Judge

We concur:

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Sheriene Anne Ridenour

Administrative Law Judge

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Josh Lambert

Administrative Law Judge

Date Issued: 4/4/2022